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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,638	12/19/2001	Richard A. Kollaja	56782US002	2655
32692	7590	04/13/2004	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			ZIRKER, DANIEL R	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 3/26/04
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-18 is/are pending in the application.
- Of the above claim(s) 9-12, 15-18 is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-8, 13, 14 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. As noted in the Interview Summary mailed March 31, 2004, the Examiner withdraws the final rejection of record and institutes the following restriction requirement. It is noted that applicants have responded March 26, 2004 before receiving the Interview Summary, and has amended the claims before they were acted on; the Examiner nevertheless will impose his restriction requirement on the latest set of claims presented by applicants.

3. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-8, 13 and 14, drawn to a polymeric co-extruded multilayer web, classified in Class 428, subclass 500.

II. Claims 9-12, drawn to a polymeric web, classified in Class 428, subclass 411.1.

4. III. Claims 15-18, drawn to a polymeric web, classified in Class 428, subclass 515.

5. The inventions are distinct, each from the other because of the following reasons:

6. Inventions Group II and Group I are related as mutually exclusive species in an intermediate-final product relationship.

Distinctness is proven for claims in this relationship if the

intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a polymeric web useful in a wide variety of polymeric films and other articles and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicants traverse on the ground that the species are not patentably distinct, applicants should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. Inventions Group I and Group III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the

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combination of Group I has a wide variety of utilities in laminated films and other articles. The subcombination has separate utility such as a separate film such as a packaging film or the like.

8. Inventions Group II and Group III are unrelated as two substantially different articles. In the instant case the articles, i.e. polymeric webs, possess different numbers of laminated film layers and different structures in these film layers and also Group III is specific with respect to the various species that can comprise its "at least three layers that are substantially continuous down-web and cross-web".

9. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes as indicated is proper.

10. During a telephone conversation with Douglas Little on March 25, 2004, and as further elaborated on in his response dated March 26, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-8, 13 and 14. Affirmation of this election must be made by applicants in replying to this Office action. Claims 9-12 and 15-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

11. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

12. Claims 1-8, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either the English translation of DE -452 or WO -857, each taken in view of either Wyeth et al. or Schrenk et al., each taken as evidence of the state of the art substantially for reasons already of record, together with the following additional observations. To again essentially reiterate, both of the primary references disclose, in certain embodiments, polymeric co-extruded multilayer webs which are made from a variety of thermoplastic and other conventional polymers which can include adhesives and the like, and can be arranged in a wide variety of laminated embodiments such as those applicants claim. With respect to the broad genres of embodiments that are claimed in at least one of applicants' dependent claims, (as well as newly amended claim 6 which is now an independent claim), these are each believed to merely recite a wide variety of well known polymeric compositions and related species as well as

various design layers and other conventional structures that are well known to the skilled artisan. Note again the secondary references and their teachings with respect to the state and skill of the art which clearly indicate that a particular co-extruded web structure involving a desired number of layers, each layer being either continuous or discontinuous in a desired direction and which may further utilize a plurality of distinct phases are each believed to be parameters that are well within the ordinary skill of the art. Note also that both Wyeth et al. and Schrenk et al. are relied upon only to show that thermoplastic materials such as applicants contemplate can be made from a variety of layers and can be formed with a variety of fluid passageways and "a pattern of interconnected or disconnected projections, grooves, embossed pits, valleys or corrugations in one or . . . sheets" (Wyeth et al., column 2 lines 58-63) and note further that Schrenk et al. discloses (e.g. column 12, lines 20-24) that "a wide variety of structures may be produced. Particularly beneficial and advantageous are . . . films, coatings, rods and filaments which are prepared by employing diverse thermoplastic resinous materials in adjacent layers to provide . . . body".

Applicants have made a variety of arguments in their latest response, such as the fact that DE -452 teaches (Response,

page 7, second complete paragraph) that "it distinguishes itself from multilayer films". However, the Examiner notes that page 5, lines 4-7 of the translation mentions structures "whereby the different polymer melts are layered on top of each other" and further notes that each of the secondary references teaches a broad variety of multilayer films. With respect to applicants' remarks (Response, page 8) concerning Wyeth et al. and Schrenk et al., it is again noted that these references are relied upon for their specific teachings of the state of the art, the state of the art being broadly disclosed, and do not generally delve into specific structures which, it is believed well evident from the teachings of the reference, are well within the ordinary skill of the art. Finally, with respect to applicants' contention that they have discovered unexpected results, the Examiner simply notes that no such comparison has been made against the closest prior art, i.e., the reference combinations relied upon and thus it is respectfully submitted that applicants have failed to rebut the prima facie case of record.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (571) 272-1486. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzirker:cdc

April 7, 2004

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1800
1700

Daniel Zinker